The result reached by the court, although going far beyond the generally stated rule, that a child is treated as born when for his benefit, is certainly supported by cases arising under the rule against perpetuities (Gray on Perp., §§ 220–222), if not by others. An important case in this connection is that of *Blosson* v. *Blosson*, 2 D. J. & S. 665, where an opposite conclusion was arrived at. There, however, the phrase was "born and living," practically contrasting birth with life; and, besides, the consequences of regarding the unborn child as born would have resulted in postponing his enjoyment of certain property for years, a decided detriment, instead of benefit, to the child. The effect of that decision may, therefore, be limited to cases which would have an injurious influence on the interests of the infant *en ventre sa mère*. On the broader question of whether the child is to be treated as alive or not, when his interests are not concerned, there is little if any authority against *In re Burrows*. The cases under the rule against perpetuities are, perhaps, to be specially justified by the arbitrary nature of that rule and the better fulfilment of the testator's intention by such an extension of time. At the bottom, however, the notion is the same, and the refusal to include the living though unborn child under the words "issue or child living," in most cases, defeats the real meaning of the testator. Historically, perhaps, the law has looked at this from a different point of view, but, in logic and reason, would not the other attitude be the better, to consider the issue which by the course and order of nature is a living thing, as alive, unless some good grounds be shown, as in *Blosson* v. *Blosson*, for holding otherwise?

WHO CAN QUESTION A DEVISE TO A CORPORATION? — The Court of Appeals of Maryland has just been called upon to take sides on the question whether the power of a corporation to take by devise more property than is allowed it by its charter can be questioned by the testator's heirs, or only by the State. The court recognized the existence of the two doctrines and chose the latter, adopting the view of the United States Supreme Court in *Jones* v. *Habersham* (107 U. S. 174) rather than that of the New York court in *In re McGraw* (111 N. Y. 66). As a matter of authority, the choice was with the weaker side. In the Supreme Court case, the question seems to have been passed over without much consideration, for no reasons are given to support the proposition, and the authorities cited are not in point; moreover, the circumstance that the case did not require a decision on this subject confirms the impression that the court did not give the matter its serious consideration. In the New York case, on the other hand, the subject was thoroughly investigated; the point was squarely involved, over a million dollars were at stake, and counsel and court were profuse in their researches. The New York decision appears to have been followed by nearly every court which has had actually to pass upon the question; the judges who have expressed *dicta* to the contrary seem, like the Supreme Court, to have taken the matter largely for granted, and to have failed to make an important discrimination.

The confusion seems to arise from treating a taking by devise on the same footing as a taking by deed. Whether there is any true ground for the distinction may be a matter of dispute, but it will at least aid in a clearer understanding of the subject if the two questions are not treated as identical. As to a conveyance by deed where a corporation is forbidden to take the

property, it seems to be settled that such a transfer can be questioned by no one but the State. From this it is assumed that only the State can interfere in the carrying out of a devise. But why is it that a grantor cannot question his grant? He has seen fit to pass his property out of his own hands into the hands of the corporation, and he cannot afterwards be heard to say that the corporation was not capable of receiving the property. The law so far recognizes the existence of the corporation's power to take the grant, that it will not interfere to undo for the benefit of an individual that which the individual has voluntarily done. One should not say, perhaps, that the grantor is estopped from questioning the grant, because the elements of a true estoppel are lacking; but one can say that where such a transaction is executed, where everything has passed between the parties themselves, and all is completed, the law will not move itself to disturb the *status quo*.

When it comes to giving effect to a devise, the law is put in a far different position. Instead of being allowed to stay its hand, it is asked to take an active part in transferring to a creature of its own making property which it has forbidden that creature to take. Before, the transaction had been executed, and the law chose not to disturb it; now, the property has yet to pass to the corporation, and the law is called upon to declare positively that it shall so pass. That the law should, as in this second instance, refuse to take part in a forbidden act, appears to be in accordance with both the dignity of the judiciary and the intention of the legislature.

Whenever the question comes up before the Supreme Court of the United States for a decision, an interesting circumstance will be that the judge who delivered the opinion in the *McGraw* case was Mr. Justice Peckham.

CUSTODY OR POSSESSION. — In *Holebrook* v. *State*, 18 S. R. 109, the Supreme Court of Alabama seems not to distinguish between possession and custody. The indictment was for larceny. The prosecuting witness hired the defendant to convey him to a railroad station. Arriving there, he left with the defendant a quilt, which the defendant agreed to return to the house of the witness. Instead, the defendant sold it. The court sustained the verdict of guilty, on the ground that the defendant was not given possession, but mere custody.

The court recognizes the established rule of the common law that there is no larceny without trespass to possession, but takes it for granted that the defendant received only custody of the property. The reason for this assumption is not clear, unless it can be gathered from a passage from Rosc. Cr. Ev. § 646, which the court quotes without comment. This is merely a statement of the rule that, where a master delivers goods to a servant, the servant has only the custody of the goods. Obviously, it has no bearing on the case under consideration. Here, though it is often difficult to determine just what are the limitations of the doctrine of master and servant, there was obviously no such relation. The defendant was exactly in the position of a private carrier, and as such received the possession, not the custody, of the property. Doubtless the court was moved by the fact that, whether the defendant was convicted of larceny or embezzlement, his penalty would be practically the same, and to avoid further litigation sustained the conviction of larceny. But this seems no excuse for direct departure from principle. It was to cover just such cases as this that the Statute